eign government that engages in intelligence activities within the United States harmful to the national security of the United States and the respective numbers, status, privileges and immunities, travel, accommodations, and facilities within such country of official representatives of the United States to such country, and any action which may have been taken with respect thereto.

(c) Section 203 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4303) is amended—

(1) in subsection (a) by striking out the fifth sentence; and

(2) by amending subsection (b) to read as follows:

"(b) There shall also be a Deputy Director of the Office of Foreign Missions. Either the Director or the Deputy Director of such Office shall be an individual who has served in the United States Foreign Service, while the other of the two shall be an individual who has served in the United States Intelligence Community."

(d) The amendments made by subsection (c) shall apply only with respect to any appointment of a Director or Deputy Director of the Office of Foreign Missions, as the case may be, after the date of enactment of this section.

TITLE VII—GENERAL PROVISIONS

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 701. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

SEC. 702. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

TITLE VIII—ACTIVITIES IN NICARAGUA

MILITARY OR PARAMILITARY ACTIVITIES

SEC. 801. No funds Authorized to be appropriated by this Act or by the Intelligence Authorization Act for fiscal year 1984 (Public Law 98-215) may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual, except to the extent provided and under the terms and conditions specified by House Joint Resolution 648, making continuing appropriations for the fiscal year 1985, and for other purposes, as enacted.

Mr. BOLAND (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. ROBINSON. Mr. Speaker, I reserve the right to object.

(Mr. ROBINSON asked and was given permission to revise and extend remarks, and include extraneous material.)

Mr. ROBINSON. Mr. Speaker, I reserve the right to object, to give the gentleman from Massachusetts an opportunity to explain the Senate amendments.

Mr. BOLAND. Will the gentleman yield?

Mr. ROBINSON. I yield to the gentleman.

Mr. BOLAND. Mr. Speaker, the Senate amendments to H.R. 5399 reflect an agreement reached between the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence on all budgetary and legislative matters contained in H.R. 5399, the House version of the intelligence authorization bill for fiscal year 1985 and S. 2713, the Senate version of that bill.

Further, the Senate amendments are fully consistent with those amounts authorized by the fiscal year 1985 Defense Authorization Conference Report for all those tactical intelligence and related activities programs, jointly authorized by the Intelligence and Armed Services Committees.

Because of the Senate's failure to move earlier on the House-passed bill, the committees were forced to agree in advance, but without formal conference, on all those matters at issue.

Such an agreement has been reached.

As everyone here understands, the reason that it has been held up until this moment is because of the House bill's prohibition on U.S. assistance to the insurgents in Nicaragua.

The Senate amendment solves this issue by incorporating by reference the compromise agreement reached in the continuing resolution on Nicaragua.

It also reflects agreement on provisions authorizing the CIA to designate special police for the protection of their facilities over which the U.S. Government has acquired proprietarial, concurrent, or exclusive jurisdiction.

It contains language expressing the sense of Congress that the numbers, status, and privileges of diplomats of foreign countries who engage in intelligence activities in this country harmful to our interest should not exceed the comparable number, status, and privileges of U.S. diplomats in those countries.

Finally, it provides important new personnel authorities to the Defense Intelligence Agency to enable that Agency to configure its personnel system in ways similar to the personnel systems at the CIA and NSA.

Mr. Speaker, at this point, I ask unanimous consent that a detailed description of the provisions of the Senate amendment be made a part of the RECORD.

This statement should serve in lieu of a statement of managers language that would have accompanied a conference report, had a conference occurred between the two bodies.

Let me finish with a more detailed description of the Nicaragua compromise incorporated by reference into the bill.

Mr. Speaker, the compromise which we have worked out on Nicaragua preserves the House position with one proviso.

No funds may be spent on the secret war in Nicaragua until February 28, 1985.

Thereafter if the President certifies that Nicaragua is supporting anti-Government forces in any other country in Central America, and if he requests more funds for the war, a vote is guaranteed on a joint resolution providing such funds.

This is an MX-type guaranteed vote—an expedited process that ensures a vote on the President's request.

The joint resolution, if approved by both Houses, would remove the prohibition on the use of already appropriated funds for the war.

In any event, no more than $14 million could be spent during the balance of the fiscal year.

This approach goes as far as I believe the strong House position would permit.

Only if Congress affirmatively provides for a renewal of funding for the war could any funds be used for that purpose.

Let me make very clear that this prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedure at any agency.

It clearly prohibits any expenditure, including those from accounts for salaries and all support costs.

The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost.

The compromise allows the President and the Congress to see how several key matters develop in the next 5 months.

Those are: Proposed talks between the Government of El Salvador and the Salvadorean rebels, the continued bilateral talks between the United States and Nicaragua, the resolution of the Contadora Draft Treaty, and the Nicaraguan elections.

The President—whoever he may be—will no doubt take into account events affecting these four matters if he makes a request for funds.

If he does make a request, it will be a new Congress, a new Intelligence Committee and those new facts which will influence the action of the House and Senate.

To repeat, the compromise provision clearly ends U.S. support for war in Nicaragua.

Such support can only be renewed if the President can convince the Congress that this very strict prohibition should be overturned.

Mr. ROBINSON. Continuing my reservation, Mr. Speaker, I support the motion to concur in the Senate amendments to H.R. 5399, the Intelligence Authorization Act for fiscal year 1985.

The bill authorizes appropriations for fiscal year 1985 for the conduct of intelligence and intelligence-related activities by the departments and

agencies within the U.S. intelligence community. I believe it is fair to say that the members of the Intelligence Committee are unanimous in the opinion that effective intelligence capabilities are essential to the safety and well-being of the Nation. For this reason, we bring the bill to the floor at this late hour, because it is so essential to have authorizing language in place before this Congress goes into sine die adjournment.

(Mr. ROBINSON asked for and was given the right to revise and extend his remarks and to insert extraneous material.)

Mr. Speaker, this bill is quite similar to H.R. 5399 as it passed the House on August 2 of this year. The bill contains four significant differences other than funding level compromises between Senate and House funding of particular intelligence programs. These four provisions are: A provision for new personnel authorities for the Defense Intelligence Agency, a provision solving a legislative veto concern with the CIA Retirement Act of 1964, a sense-of-the-Congress provision concerning diplomatic reciprocity, and the provision concerning Nicaragua.

The DIA personnel provision provides special authority for the hiring, categorization, and separation of DIA personnel. These provisions will improve DIA personnel management, and I believe they deserve support.

The CIA Retirement Act provision rehabilitates a section of that act which contained a provision possibly subject to question after the Supreme Court's legislative veto decision in INS against Chadha. This largely technical provision deserves full support, and I especially commend Chairman BOLAND for his leadership in ensuring that the past, present, and future rights and benefits of participants in the CIA retirement system are completely safe. I ask that the letter and enclosure dated September 26, 1984, from Chairman BOLAND to Senate Intelligence Committee Chairman GOLDWATER proposing and explaining this CIA Retirement Act provision be printed in the RECORD at this point.

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE
ON INTELLIGENCE,
Washington, DC, September 26, 1984.

Hon. BARRY M. GOLDWATER,
Chairman, Committee on Intelligence, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: Section 201(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) provides that CIA regulations implementing the Act cannot take effect until they are approved by the chairmen and ranking minority members of the House and Senate Armed Services Committees. This provision fails to pass constitutional muster under the Supreme Court's recent legislative veto decision, *Immigration and Naturalization Service v. Chadha*, 103, S. Ct. 2764 (1983).

Recent appellate court decisions concerning other statutes containing legislative vetoes create concern that the unconstitutional legislative veto provision in the CIA Retirement Act could be construed to render the entire Act infirm. Although substantial legal arguments can be made that, on the contrary, only the legislative veto provision of the CIA Retirement Act is infirm and the rest of the statute remains valid, I believe we shoud act now to eliminate any risk of jeopardizing, even temporarily, the pension benefits of participants in the CIA Retirement and Disability System.

I have enclosed an amendment to solve this problem which I would recommend be attached to the Sente Intelligence Authorization Bill for Fiscal Year 1985 (S. 2713). The amendment replaces the unconstitutional legislative veto provision in the CIA Retirement Act with a requirement to report CIA Retirement Act regulations in advance to the two intelligence committees. The reporting requirement is similar to that currently contained in Section 4(bX5) of the CIA Act of 1949 (50 U.S.C. 403e(bX5)).

We in the Congress owe it to those in the CIA who have served their country well to ensure the safety of their retirement system.

With every good wish, I am,
Sincerely yours,
EDWARD P. BOLAND,
Chairman.

PROPOSED AMENDMENT TO FY 1985 INTELLIGENCE AUTHORIZATION BILL (S. 2713) ADJUSTING CONGRESSIONAL REPORTING REQUIREMENT FOR CIARDS REGULATIONS

Proposed Amendment to Authorization Bill

Add at the end of Title III of the Bill the following new section:

"TECHNICAL AMENDMENT TO CIA RETIREMENT ACT"

"SEC. 302. Section 210(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended by striking "to become effective after approval by the chairman and ranking minority members of the Armed Services Committees of the House and Senate" and inserting in lieu thereof "to be submitted to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate before they take effect"."

Current Provision of Law Being Amended

Section 210(a) of the CIA Retirement Act of 1964 for Certain Employees provides:

"SEC. 201. (a) The Director may prescribe rules and regulations for the establishment and maintenance of a Central Intelligence Agency Retirement and Disability System for a limited number of employees, referred to hereafter as the system; such rules and regulations to become effective after approval by the chairman and ranking minority members of the Armed Services Committees of the House and Senate."

Origin of the Existing Statutory Provision

The requirement for approval of CIA regulations implementing the CIA Retirement Act by the Armed Services Committees' chairmen and ranking minority members arose in the legislative process as a mechanism to guarantee that the CIA Retirement and Disability System (CIARDS) would cover only those special classes of CIA personnel whom CIA had justified to the committees as deserving special retirement benefits. The provision was added as a floor amendment during House consideration of the legislation. 109 *Cong. Rec.* 20626-28 (perm. ed. October 30, 1963). It is apparent from the House floor debate that Members believe that security requirements prevented stating publicly the agreed-upon criteria for CIARDS eligibility, and thus they left the establishment of the criteria to classified CIA regulations. To ensure that the CIA regulations would contain the agreed-upon criteria, the floor amendment provided that the CIA regulations would not take effect until approved by the leadership of the armed services committees.

Need for Proposed Provision

The current statutory provision requiring the approval of the leadership of the House and Senate Armed Services Committees for CIA regulations implementing the CIA Retirement Act of 1964 should be amended because (1) it is unconstitutional, creating a risk of infirmity of the CIA retirement system and (2) it is a jurisdictional anomaly.

1. *Unconstitutionality and Risk to CIA Retirement System.* The requirement for approval of CIA Retirement Act regulations by four Members of Congress would not appear to survive the Supreme Court's decision in *Immigration and Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983), the one-House legislative veto decision. The Executive Branch has maintained that the approval requirement was unconstitutional since the CIA Retirement Act was first enacted. In his statement upon signing the Act, President Lyndon B. Johnson stated in reference to the provision:

"Such a provision attempts to confer executive powers on the members of the legislative branch, in violation of the constitutional principle of separation of powers."

"However, I recognize that the adoption of this objectionable provision is due in large part to the fact that the anticipated coverage of the retirement system, which was explained to the committees, cannot for security reasons be set forth in the bill. Accordingly, I shall treat this provision as a request for consultation with the named committee members, and shall ask the Director to comply with it on that basis."

The proposed amendment to the CIA Retirement Act requiring reporting of CIA regulations to the intelligence committees of the Congress prior to their effective date would avoid the constitutional infirmity of a legislative veto/approval requirement, while ensuring that the intelligence committees have an opportunity to review the CIA regulations and make their views known before the regulations take effect. Such reporting provisions do not raise separation-of-powers problems. *Sibbach v. Wilson*, 312 U.S. 1, 15 (1941). Precedent for requiring reporting to the intelligence committees of CIA regulations prior to their taking effect exists in Section 4(bX5) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403e(b)(5)), as amended by the Intelligence Authorization Act for Fiscal Year 1982, upon which the proposed amendment to the CIA Retirement Act is based.

The key issue after the *Chadha* case arising with respect to statutes containing legislative veto provisions is whether (1) the unconstitutionality of the veto provision renders the entire statute infirm, or instead (2) the veto provision should be considered severable, leaving the remainder of the statute intact. In *Chadha*, the Supreme Court upheld the remainder of a statute containing an unconstitutional legislative veto provision, giving great weight to the presence in the statute of a severability clause as a clear indication of congressional intent that the legal infirmity of any particular provision of the statute should not effect the validity of the remainder of the statute. The CIA Retirement Act does not contain a severability clause. Recent conflicting decisions by United States Courts of Appeals concerning a statute which contained a legislative veto provision, but not a severability clause,